

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**CITY OF ST. JOSEPH,
RESPONDENT**

vs.

**DEWAYNE A. LEER,
APPELLANT**

DOCKET NUMBER WD78450

DATE: NOVEMBER 3, 2015

Appeal from:

The Circuit Court of Buchanan County, Missouri
The Honorable Daniel F. Kellogg, Judge

Appellate Judges:

Before Division Three: Joseph M. Ellis, P.J., Gary D. Witt, J. and Zel M. Fischer, Sp.J.

Attorneys:

Laura B. Lutz, for Respondent

Jonathan Sternberg, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
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CITY OF ST. JOSEPH, MISSOURI, RESPONDENT

v.

DEWAYNE A. LEER, APPELLANT

WD78450

Buchanan County, Missouri

Before Division Three Judges: Joseph M. Ellis, P.J., Gary D. Witt, J. and Zel M. Fischer, Sp.J.

Dewayne Leer and his wife own Uncle D's Sports Bar & Grill, a restaurant and bar located in St. Joseph, Missouri. In addition to serving food and alcohol, Uncle D's has two coin operated pool tables, four other coin operated games, and dart boards for its patrons to use.

On August 21, 2014, an enforcement officer with the City Health Department issued a citation to Appellant for allowing smoking inside Uncle D's in violation of city ordinance § 17-337. On August 29, 2014, an officer cited Appellant for having "ashtrays at the bar with ashes inside" in violation of § 17-335. At trial, Appellant admitted that he allows smoking at Uncle D's.

In defending against the charges, Appellant filed motions to have the charges dismissed. Appellant maintained that the ordinances he was charged with violating did not apply to Uncle D's because it is a "billiard parlor" and that billiard parlors had been deemed not to be a "public place" in a previously enacted 1993 article limiting smoking in public places ("the 1993 Article"). In the alternative, he argued that the ordinances are unconstitutional special laws because the 2014 no-smoking article under which he was charged ("the 2014 Article") improperly exempts casino gaming areas and grants a special privilege to the local casino. He further contended that the 2014 Article was unconstitutional because an ordinance provision provides that the casino gaming area exemption would end if smoking were banned at all other non-Native American casinos in the region, improperly delegating to other governmental entities in the region the legislative power to ban smoking in St. Joseph casino gaming areas.

On trial *de novo*, the Circuit Court of Buchanan County denied Appellant's motion to dismiss without making any findings of fact or conclusions of law. Appellant was found guilty as charged and fined \$100 for each of the two violations. On appeal, Appellant brings four points challenging the trial court's decision not to dismiss the charges against him.

AFFIRMED.

Division Three holds:

- (1) The 2014 Article clearly provides its own definitions for "public place" and "place of employment" and specifically sets out what establishments are exempt from its provisions. Section 17.328 provides that smoking is prohibited in all public places including, specifically, "bars" and "restaurants." Section 17-329 prohibits smoking in all "places of employment." Overwhelming evidence was presented that Uncle D's is a "bar," "restaurant," and "place of employment" as those terms are defined in the 2014 Article, and none of the exemptions contained in § 17-332 are applicable to it.
- (2) The fact that the 2014 Article prohibits smoking in more places and to a greater extent than the 1993 Article does not somehow make the 1993 Article a piece of specific legislation that should control over the 2014 Article.
- (3) The definitional ordinance in both of the articles makes clear that the definitions for the words and phrases provided therein are to apply when used in that particular article. Furthermore, both articles contain ordinances setting out specific places that are exempt from their provisions. The definitions and exemptions contained in the 1993 Article are simply inapplicable to the 2014 Article which has its own definitions and exemptions.
- (4) The 2014 Article does not contain a billiard parlor exemption; accordingly, the trial court did not err in declining to dismiss the charges against Appellant based upon his claims that Uncle D's is a billiard parlor.
- (5) Appellant's remaining points on appeal challenge the constitutionality of various aspects of the 2014 Article. This Court need not address whether any of Appellant's constitutional arguments have merit because the challenged provisions in the 2014 Article have no bearing on the charges against him and, if found to be unconstitutional, the challenged provisions would be severable from the remainder of the article.
- (6) While Appellant contends that the voters would not have enacted the 2014 Article without the provisions related to casino gaming areas, the 2014 Article contains a severability clause, § 17.341, that belies that contention. Moreover, viewing the casino gaming area provisions together with each other, the 2014 Article reflects a desire by the voters that smoking be banned in casino gaming areas, though it delays the implementation of such a ban until other communities in the area have similarly banned smoking in their casinos. We simply cannot conclude that the delay in implementation of such a ban was so integral to the 2014 Article that it is likely that the voters would not have approved the 2014 Article without it.

(7) Even if this Court were to find that one or more of the casino gaming provisions in the 2014 Article was unconstitutional and, therefore, void, those provisions would be severable from the article as a whole pursuant to § 17.341. Since those provisions would be severable, the provisions under which Appellant was convicted would remain unaffected by any determination we might make regarding their constitutionality. Accordingly, the arguments presented in Appellant's second, third, and fourth points cannot possibly support a finding that the trial court erred in failing to dismiss the charges against him.

Opinion by Joseph M. Ellis, Judge

Date: November 3, 2015

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